



In the Matter of:

SHARYN ERICKSON,

COMPLAINANT,

v.

ARB CASE NO. 03-011

ALJ CASE NO. 99-CAA-2

DATE: January 29, 2004

U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION IV, ATLANTA, GEORGIA & EPA
INSPECTOR GENERAL,

RESPONDENTS:

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Edward Slavin, Jr., Esq., *St. Augustine, Florida*

For the Respondent U.S. Environmental Protection Agency, Region 4, Atlanta:

Karol Smith, Esq., *U.S. Environmental Protection Agency, Atlanta, Georgia*

For the Respondent EPA Inspector General

Eric W. Hanger, Esq., *U.S. Environmental Protection Agency, Washington, D.C.*

ORDER DISMISSING APPEAL

On September 24, 2002, Administrative Law Judge Clement J. Kennington issued a Recommended Decision and Order in *Erickson v. United States Env'tl. Prot. Agency*, ALJ Nos. 1999-CAA-2, 2001-CAA-9 and 13, 2002-CAA-3 and 18, finding that Respondent EPA retaliated against Complainant Sharyn Erickson in violation of the employee protection provisions of a number of environmental statutes.¹ On September

¹ These statutes include: the Clean Air Act, 42 U.S.C.A. § 7622 (West 1995); the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A §

Continued . . .

30, 2002, Complainant Jeanne F. Greene² and Erickson filed a motion renewing their request³ that the Chief Administrative Law Judge grant their motion to consolidate their cases for hearing before Administrative Law Judge Kennington.

On October 15, 2002, Associate Chief Administrative Law Judge Thomas M. Burke issued an Order Denying Motion to Consolidate. Complainant Erickson filed a Protective Petition for Review of this Order on October 28, 2002. On February 10, 2003, Administrative Law Judge Cregar issued a Recommended Decision and Order dismissing Greene's complaint. *Greene v. United States Envtl. Prot. Agency*, ALJ No. 2002-SWD-1.

On April 30, 2003, the Board issued an Order to Show Cause why Erickson's appeal should not be dismissed on the ground that the ALJ's recommended decision in *Greene* became the Secretary's final order when Greene did not timely appeal it. Greene subsequently appealed the ALJ's recommended decision, and the issue of whether Greene's untimely filing should be excused currently is pending before the Board. *Greene v. United States Envtl. Prot. Agency*, ARB No. 03-094, ALJ No. 2002-SWD-1.

Nevertheless, the Board has concluded that Erickson's appeal of the ALJ's denial of her motion to consolidate must be dismissed because the issue is moot. Both ALJs have concluded their adjudication of their respective cases and have issued recommended decisions and orders. Therefore, the *Greene* and *Erickson* cases are no longer before the ALJs and consequently there are no pending cases that could be subject to consolidation. Accordingly, we **DISMISS** the Complainant's petition for review.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

9610 (West 1995); the Federal Water Pollution Control Act, 33 U.S.C.A. § 1367 (West 2001); the Safe Drinking Water Act, 42 U.S.C.A. § 300(j)-9(i) (West 1991); and the Solid Waste Disposal Act, 42 U.S.C.A. § 6971 (West 1995).

² *Greene v. United States Envtl. Prot. Agency*, ALJ No. 2002-SWD-1.

³ Administrative Law Judge Kennington orally denied the motion to consolidate, finding that in cases in which two different administrative law judges had been assigned to two different cases, only the "headquarters of the Office of Administrative Law Judges is in a position to order consolidation." Order Denying Motion to Consolidate at 3.